

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARETHA BRAZIEL, individually and
as Next Friend for minors R.B., D.B.,
and D.R, et al.,

Plaintiffs,

Hon. Janet T. Neff

v.

Case No. 1:21-cv-0960

GOVERNOR GRETCHEN WHITMER, et
al.,

Defendants.

/

DWAYNE GRANT, individually and as
Next Friend for D.G, et al.,

Plaintiffs,

Hon. Janet T. Neff

v.

Case No. 1:22-cv-0186

U.S. ENVIRONMENTAL PROTECTION
AGENCY, et al.,

Defendants.

/

A.M., a minor by and through Iesha
Mitchell, Guardian and Next Friend,
et al.,

Plaintiffs,

Hon. Janet T. Neff

v.

Case No. 1:22-cv-0475

CITY OF BENTON HARBOR, et al.,

Defendants.

/

ORDER

The Court conducted a joint status conference in the three captioned matters on August 30, 2022. (Minutes, ECF Nos. 113, 43, and 57).¹ Counsel for all parties appeared.²

The Court addressed a number of issues with counsel for all parties, including pending requests for pre-motion conferences in which all served defendants have expressed interest in filing motions to dismiss under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). The Court also discussed with counsel proposals for making the litigation of these three cases as efficient and cost effective as practical.

¹ The citations to docket entries in this Order are to Case No. 1:21-cv-0960 unless otherwise noted. A copy of this Order shall be filed in each of the three cases captioned above.

² The following defendants have not yet been served in Case No. 1:22-cv-186: The U.S. Environmental Protection Agency (EPA), EPA Directors Michael S. Reagan and Debra Shore, and Michigan Department of Health and Human Services Director Robert Gordon.

For the reasons stated on the record, **IT IS ORDERED** that the following requests for pre-motion conference are **DISMISSED** without prejudice:

- Case No. 1:21-cv-0960, ECF No. 83, 88, 97, 102, and 111 (supplemental request);
- Case No. 1:22-cv-0186, ECF No. 12, 20, 30, 36, and 42; and
- Case No. 1:22-cv-0475, ECF No. 26, 33, 43, 50, and 55 (supplemental request).

IT IS FURTHER ORDERED that counsel representing defendants in any of the three captioned cases shall, within fourteen days of the date of this Order, file amended requests for pre-motion conference. Each request shall be limited to viable issues for a Rule 12(b) motion, keeping in mind the instructions provided from the bench, and each request shall include all defendants represented by that counsel, regardless of whether the defendants are named in more than one of the captioned cases. A copy of each request must be filed in each of the captioned cases in which any of the defendants making the request has been named.

IT IS FURTHER ORDERED that Plaintiffs may, within seven days of the filing of a request for pre-motion conference, file a short response to the request, but such response shall not include legal argument regarding the proposed issues in the request.

IT IS FURTHER ORDERED that Plaintiffs' counsel shall consult with Defendants' counsel for the purpose of submitting proposals for consolidating discovery in the three captioned cases, as well as any related cases pending in state

court, as well as any other proposal that would enhance the efficiency and cost-effectiveness of litigating the three captioned cases. Plaintiffs' counsel shall file, no later than October 13, 2022, a joint proposal for the Court's consideration. This proposal shall be separately filed in each of the three captioned cases.

IT IS FURTHER ORDERED that at least one counsel representing each of the named defendants shall appear before the undersigned judicial officer on October 20, 2022, at 9:00 a.m., to address the amended requests for pre-motion conference and to discuss proposals for the efficient and cost-effective ways of litigating these cases.

IT IS FURTHER ORDERED that Plaintiff's counsel in Case No. 1:22-cv-186, shall, within thirty days of the date of this Order, serve the remaining defendants in that case.

Further, **IT IS ORDERED** that Defendant Elhorn Engineering Company's consent motion to substitute counsel, Case No. 1:21-cv-0960 (ECF No. 43), is **GRANTED**. The Clerk of Court shall substitute Meigs M. Day of Cummings, McClorey, Davis & Acho, PLC, for Matthew Tolbert Smith, Michael J. Pattwell, and Kelly E. Kane of Clark Hill, PLC.

IT IS SO ORDERED.

Date: August 30, 2022

/s/ Phillip J. Green
PHILLIP J. GREEN
United States Magistrate Judge